

SUELLEN GAY STEWART WILSON

IBLA 82-762, 82-763, 82-764

Decided January 19, 1983

Consolidated appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications. N 32882 through N 32884.

Affirmed as modified.

1. Applications and Entries: Generally -- Indian Allotments on Public Domain: Classification

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications on the ground that the land is not classified as suitable for such disposition without first ruling on the petitions.

2. Indian Allotments on Public Domain: Generally

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications are properly rejected.

APPEARANCES: Suellen Gay Stewart Wilson (see Appendix).

OPINION BY ADMINISTRATION JUDGE GRANT

These appeals are taken from decisions of the Nevada State Office, Bureau of Land Management (BLM), all dated March 25, 1982, rejecting Indian allotment applications for lands in Nevada filed pursuant to section 4 of the Act of February 8, 1887 (the General Allotment Act), as amended, 25 U.S.C. §§ 334, 336 (1976). The serial numbers of the applications, names of the applicants, and land descriptions are identified in the appendix to this decision. Appellants contend that the decisions violate their constitutional rights. 1/

1/ Because of the similarity of issues, we have consolidated the appeals for consideration.

The applications were filed in 1980 and were accompanied by petitions for classification of the lands as suitable for disposition under the General Allotment Act. However, none of the applications were accompanied by the required certificates of eligibility of the applicants as Indians entitled to apply for an allotment.

BLM rejected all of these applications because the lands applied for are within areas that have been classified for retention in Federal ownership, holding that the classification segregated the lands from appropriation under the agricultural land laws, including the General Allotment Act. These appeals followed.

[1] The land embraced in the applications under appeal has been classified as suitable for retention in Federal ownership for multiple use management pursuant to the Classification and Multiple Use Act of 1964. 43 U.S.C.A. §§ 1411-1418 (West Supp. 1982) (statute superseded). The notice of such classification published in the Federal Register expressly segregated the land from "appropriation only under the agricultural land laws (43 U.S.C. Pts. 7 and 9; 25 U.S.C. sec. 334)." 34 FR 14084 (Sept. 5, 1969). Although the right to an Indian allotment is limited by statute, 25 U.S.C. § 334 (1976), to land "not otherwise appropriated," this Board has held that where an application for lands not classified as suitable for disposition under the General Allotment Act is accompanied by a petition for classification of the lands for such disposition, BLM should ordinarily rule on the petition for classification under 43 CFR 2450.2 prior to adjudicating the allotment application. Litha Muriel Bryant Smith, 66 IBLA 150 (1982); Mary Frances Stiles, 64 IBLA 361 (1982).

[2] However, none of the applications is supported by a certificate of eligibility for allotment as required by 43 CFR 2531.1(b). It appears from the record that applicants were notified of the deficiency and provided an opportunity to rectify the omission prior to rejection of the applications, but failed to do so. The failure of appellants to provide the certificates of eligibility requires rejection of the applications. Litha Muriel Bryant Smith, *supra*. Appellants' allegation regarding abridgement of constitutional rights is unpersuasive. See Samuel Lee Gifford, 53 IBLA 23 (1981), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX

Mount Diablo

Meridian

IBLA 82-762 N-32882 Suellen Gay Stewart Wilson SE 1/4 sec. 9,
for minor daughter Tamara T. 25 S., R. 60 E.
Sue Wilson

IBLA 82-763 N-32883 Suellen Gay Stewart Wilson SW 1/4 sec. 15,
for minor son Thomas Alva T. 25 S., R. 60 E.
Wilson, Jr.

IBLA 82-764 N-32884 Suellen Gay Stewart Wilson SE 1/4 sec. 15,
for minor daughter Twana Dawn T. 25 S., R. 60 E.
Wilson

